IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CENTR.EXCISE APPEAL No. 1 of 2003

HINDUSTHAN ZINC LTD
V/S
UNION OF INDIA & ORS

Mr. RAMIT MEHTA, for the appellant / petitioner

Mr. VK MATHUR & Mr. RISHABH SANCHETI, for the respondent

Date of Order : 27.11.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

This appeal has been filed by the appellant against the judgment of Custom Excise and Service Tax Appellate Tribunal dated 18.8.2003 rejecting the same holding the appellant to be not entitled to Modvate credit in respect of sheets and plates.

It is argued by the learned counsel for the appellant that while recording this judgment, the learned Tribunal has not even applied itself to the material on record and the findings are clear out come of non-reading of the material.

On the other hand, learned counsel for the respondent supported the impugned judgment.

We have heard learned counsel for the parties and perused the impugned judgment.

From perusal of the impugned judgment of the Tribunal, it is clear that the Tribunal has recorded a positive finding at page 5 as under:-

> "...On a perusal of the records I have not come across any specific evidence in this regard. The appellants themselves do not appear to be have spelt out the exact identity of any machine (parts whereof are claimed to have been replaced) with specific reference to tariff entries. For want of identity of such machines, it is impossible to look into the question whether subject items were components or spares of any machine specified against S. Nos. 1 to 4 in the table ibid. Components and spares do not stand on their own. They must be components or spares of some machines. In the instant case, the identity of these machines has not been disclosed with reference to Tariff entries..."

As against this, learned counsel for the appellant made available for our perusal of the copy of the memo of appeal filed before the Tribunal annexing therewith the statements of facts and in para 8 thereof we find that good long details have been given of various machines and parts of which the items in question are components or spares.

In that view of the matter, instead ourselves going into the details of the identifying each of the machines or parts with respect to particular entry in the schedule for the purpose of arriving at the conclusion as

to whether these constitute components or spare of any particular machine etc. as provided in table annexed to Rule 57Q, as it then existed, we think it more appropriate to send the matter back to the Tribunal below with a direction to examine the matter on the factual aspects of the merit and in accordance with law.

Consequently, the appeal is allowed, the impugned order is set aside the matter is remanded back to the learned Tribunal with the above direction.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

/Sushil/